



California Fair Political Practices Commission

August 9, 1989

Wes Van Winkle
Law Offices of Bagatelos & Fadem
The International Building
601 California Street, Suite 1801
San Francisco, CA 94108

Re: Your Request for Informal Assistance
Our File No. I-89-335

Dear Mr. Van Winkle:

This is in response to your request for advice concerning the relationship of Section 312 of the Los Angeles City Charter to the Political Reform Act (the "Act").¹ On May 24, 1989 I gave you telephone advice on this matter but indicated that the advice was not legally binding. (See generally, Regulation 18329, copy enclosed.) I also cautioned that, should you make a written request for advice, I may reach a different conclusion after thoroughly reviewing the facts and pertinent law.

Since receipt of your letter, it has come to our attention that the Los Angeles City Attorney's Office has not formally interpreted Section 312(C)(1) of the Los Angeles City Charter as that provision relates to the payment of prior campaign debts. Therefore, we do not address that question in this letter. We ask that you obtain from the Los Angeles City Attorney's Office a written interpretation of Section 312(C)(1)'s relation to payment of prior campaign debts before seeking our analysis of whether this provision conflicts with Proposition 73.

Finally, since your request does not identify a specific person or persons on whose behalf you are authorized to request this advice, we must treat the request as one for informal assistance under Regulation 18329.²

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

QUESTION

Section 312(K) of the Los Angeles City Charter requires candidates for city office to distribute all but \$5,000 of unused contributions for an election to the city treasurer, charity or campaign contributors. Is this provision in conflict with and superseded by the provisions of Proposition 73?

CONCLUSION

Section 312(K) of the Los Angeles City Charter, to the extent that it requires candidates for city office to relinquish all but \$5,000 of unused contributions, does not conflict with Proposition 73. However, it may conflict with provisions of the Elections Code. Please contact the Attorney General's Office for advice in this regard.

DISCUSSION

Proposition 73, passed by California voters at the June 7, 1988 primary election, set forth a statutory scheme designed to control the making of campaign contributions in California. Its provisions amended the Act and were generally intended to apply to all candidates for public office in California.

However, Section 85101, which was added to the Act by Proposition 73 states:

(a) Nothing in this chapter shall affect the validity of a campaign contribution limitation in effect on the operative date of this chapter which was enacted by a local governmental agency and imposes lower contribution limitations.

(b) Nothing in this chapter shall prohibit a local governmental agency from imposing lower campaign contribution limitations for candidates for elective office in its jurisdiction.

Furthermore, Section 81013, which predated Proposition 73, states:

Nothing in this title prevents the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title. If any act of the Legislature conflicts with the provisions of this title, this title shall prevail.

Based upon these sections, it is apparent that the Act is not intended to prevent local jurisdictions either from imposing lower contribution limitations on local candidates or from imposing other campaign requirements so long as the requirements do not prevent candidates from complying with the Act.

Section 312(K) of the Los Angeles City Charter requires candidates for city office to distribute all but \$5,000 of contributions that were unused in a particular election to the city treasurer, charity or, on a pro-rata basis, to their campaign contributors.

By contrast, Section 85202(b) states that contributions in the campaign account are held in trust for campaign expenses associated with the office sought or expenses associated with holding that office.

Arguably, Charter Section 312(K) conflicts with Section 85202(b) because Section 312(K) requires certain contributions that were raised in connection with a particular office to be expended (to the city treasury, charity or contributors) in a manner not associated with the office sought. This, however, is not the only requirement of Section 85202(b). As stated above, Section 85202(b) permits contributions to be used for expenses associated with holding that office. Furthermore, Section 85202(b) is silent on the treatment of unused contributions after an unsuccessful campaign for office.

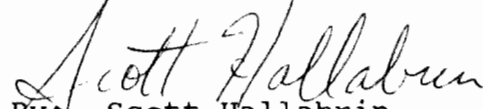
The "personal use" law, at Elections Code Sections 12400, et seq., clearly governs the disposition of campaign contributions after an unsuccessful election. To the extent that the use of contributions is not governed by the Act, the Commission staff believes the "personal use" law also governs use of contributions for officeholder expenses. For example, Section 85304 prohibits one candidate from transferring contributions to another candidate. However, we find no prohibition in the Act against the expenditure of unused contributions as set forth in Charter Section 312(K). The question, then, is whether Section 312(K) conflicts with the "personal use" law.

The Attorney General's Office, and not the Commission, has jurisdiction to enforce the "personal use" law. Therefore, we suggest that you contact that office concerning Charter Section 312(K).

Should you have any further questions, please contact me at
(916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: Scott Hallabrin
Counsel, Legal Division

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Enclosures

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May 25, 1989

Scott Hallabrin, Esq.
Senior Staff Counsel
Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804

Re: Confirmation of Telephone Advice

Dear Scott:

This firm serves as legal counsel to several elected officials in the City of Los Angeles. On behalf of these officials, I am writing to confirm your advice given to me during our telephone conversation on May 24, 1989, concerning conflicts between the provisions of Proposition 73 and Los Angeles City Charter Section 312. The facts as I presented them to you are set forth below, followed by your advice.

Los Angeles City Charter Section 312 was adopted by the city's voters in 1985 and amended in 1987. The section imposes limitations on campaign contributions in Los Angeles city elections and contains a number of other related provisions.

However, with the passage of Proposition 73 at the statewide election of June 6, 1988, it would appear that many provisions of Charter Section 312 are in conflict with state law. For example, Proposition 73 requires candidates to file a statement of intent for each office for which they will be a candidate. A candidate is then required to establish a single bank account and a single controlled committee for each such candidacy. As a result, elected officials may have several statements of intent on file at one time, and may maintain an equivalent number of controlled committees and bank accounts.

By contrast, Los Angeles City Charter Section 312 prohibits candidates for elective office in the City of Los Angeles from having more than one statement of intent on file at any particular time. Charter Section 312(C)(1) prohibits candidates for any elective city office from soliciting or accepting funds for use in any election unless and until the statement of intent for a specific candidacy has been filed. Thus, under Los Angeles law, no candidate may have more than one controlled

Scott Hallabrin, Esq.
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committee in existence at a particular time. If debts in connection with a past campaign arise after an election, the City Attorney's office has advised officeholders to pay those debts from funds raised for a future election or reelection, rather than maintaining in operation or establishing a controlled committee for the past election, as Proposition 73 requires.

Charter Section 312 also differs from the provisions of Proposition 73 in other important aspects. For example, Proposition 73 states that funds raised for a particular candidacy, and deposited into the bank account for that candidacy, must be held in trust for expenses associated with the election of the candidate to the specific office or expenses associated with holding that office. But Los Angeles City Charter Section 312 requires all but \$5,000 of the funds remaining in a campaign bank account after an election to be distributed either to the Los Angeles City Treasurer, one or more charitable organizations, or to campaign contributors on a pro rata basis (Charter Section 312(K)). Use of campaign funds for such purposes as the enrichment of the Los Angeles City Treasury would appear to violate the trust imposed by Proposition 73.

Because the provisions of Proposition 73 and Charter Section 312 differ in so many fundamental respects, our clients have been placed in the untenable position of violating one law if they obey the other. In order to resolve this conflict, I contacted you by telephone yesterday morning to seek guidance as to whether certain provisions of Los Angeles Charter Section 312 had been superseded by Proposition 73. After you had researched the governing law and consulted with Lilly Spitz of your office regarding her earlier lengthy analysis of Charter Section 312, we discussed this matter by telephone later that afternoon. Your response was as follows.

With regard to the question of whether a candidate for elective office in the City of Los Angeles may maintain more than one declaration of intent, controlled committee, and bank account at one time, you indicated that it was your opinion that Proposition 73 superseded Charter Section 312(C)(1). Thus, a candidate who had filed a declaration of intent and had recently been elected to Los Angeles elective office could maintain the controlled committee and bank account established in connection with that prior candidacy, while simultaneously filing another declaration of intent, as well as maintaining a separate controlled committee and bank account, in connection with a future candidacy.

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You cautioned that Proposition 73 permits the lower campaign contribution limitations of Charter Section 312 to apply to funds raised for such committees. Thus, a city councilmember could only accept a contribution of \$500 from a single contributor during this election cycle under local law regardless of the number of controlled committees maintained by the councilmember. This limit will apply even if the funds were to be solicited for the purpose of paying a prior campaign debt and were deposited into the bank account related to the prior candidacy.

With regard to Charter Section 312(K), which requires distribution of campaign funds in excess of \$5,000 to the City Treasurer or other potential recipients, you opined that Proposition 73 superseded Charter Section 312. You stated that Proposition 73 permits local ordinances to be more restrictive only in terms of the contribution limitations imposed. You noted that the provisions of Charter Section 312(K) do not impose a contribution limit, but instead establish a requirement pertaining to the disposal of funds. You stated that this conflicts with Proposition 73 and that Proposition 73 would prevail. In addition, you indicated that the trust provision of Proposition 73 would prohibit funds from being distributed in the manner required in Charter Section 312(K).

Finally, you indicated that the rationale which led the United States District Court in Sacramento to recently enjoin the enforcement of Proposition 73's "carryover" prohibition would also lead to the conclusion that Charter Section 312(K) was unconstitutional. Proposition 73 had prohibited candidates for elective office from using funds raised prior to January 1, 1989, for subsequent candidacies; but on May 15, 1989, the federal court enjoined the FPPC from enforcing this provision on the grounds that the provision was an unlawful limitation on expenditures (see, e.g., Buckley v. Valeo (1976) 424 U.S. 1). It was your opinion that Charter Section 312 could also be viewed as a limitation on expenditures in violation of the Buckley rule.

I recognize that telephone guidance of the FPPC legal department is not considered legally binding. Therefore, I am requesting a written opinion regarding the questions and responses discussed herein. You indicated during our conversation that such a written opinion would probably take approximately a month to prepare due to other time constraints. If you subsequently learn that this opinion will require more time, please let me know.

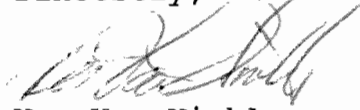
Scott Hallabrin, Esq.

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I appreciate your prompt response to my questions. In the event that I have misstated any of your advice with regard to these matters, please let me know as quickly as possible. Please do not hesitate to contact me if there is any additional information I can provide.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Wes Van Winkle', written over a light blue horizontal line.

Wes Van Winkle
Of Counsel

WVW/mlq



California Fair Political Practices Commission

June 1, 1989

Wes Van Winkle
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The International Building
601 California Street, Suite 1801
San Francisco, CA 94108

Re: Letter No. 89-335

Dear Mr. Van Winkle:

Your letter requesting advice under the Political Reform Act was received on May 30, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Scott Hallabrin an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Scott Hallabrin for
Kathryn E. Donovan
General Counsel

KED:plh